

12 June 2007

Subject: Addendum No. 5 to Specifications for the **Fuel Cell System**.

Notice is given that the revisions listed in the attached Addendum No. 5 are hereby made part of and incorporated into the Specifications for the **Fuel Cell System**.

This addendum should be acknowledged when your bid is submitted. Failure to acknowledge the Addendum may constitute grounds for rejection of the bid.

John Stufflebean
Director
Environmental Services Department

By: 

Dale Ihrke, PE
Deputy Director

Attachment

cc: Cynthia Jaszka, City Clerk
Dori Guerreiro, Office of Equality Assurance

Addendum No. 5

Fuel Cell System

Specification

1. The Notice to Contractors is revised to add the following section entitled “Procedure for Submitting Request for Evaluation of Alternative Technology”

“Procedure for Submitting Request for Evaluation of Alternative Fuel Cell Technology

Any prospective bidder that is interested in having the City evaluate a fuel cell technology other than the molten carbonate fuel cell technology that is specified in the specifications (“Alternative Fuel Cell Technology”) as a “equal product” to the molten carbonate fuel cell technology shall submit information and documentation demonstrating that the Alternative Fuel Cell Technology 1) can meet or exceed all Fuel Cell System design and performance criteria set for the specifications and 2) have at least two successful installations in the United States with each having a capacity of at least 1 Megawatt and that currently operate using digester gas as a fuel source. Information shall include, but not be limited to: technical description of the Alternative Fuel Cell Technology and technical comparison of Alternative Fuel Cell Technology to molten carbonate type technology; name and location of all manufacturers of the Alternative Fuel Cell Technology; name and location of any facilities known to the prospective bidders where the Alternative Fuel Cell Technology has been successfully installed; such other information as shall be required in order for the City to evaluate whether the Alternative Fuel Cell Technology can meet or exceed all Fuel Cell System design and performance criteria set for the specifications. Information and documentation concerning Alternative Fuel Cell technology shall be submitted in writing (no facsimiles or electronic mail will be accepted) on or before 4:00 pm, Tuesday, June 19, 2007 and addressed to:

San Jose/Santa Clara Water Pollution Control Plant
700 Los Esteros Road
San Jose, CA 95134

Re: Fuel Cell System
Attn: Mario de Leon

2. Sections 21 & 22 of the Fuel Cell Service Agreement are revised to read as follows:

a. Section 21 Assignability

Replace the entire Section 21 with:

"The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. City will consent to the assignment of this Agreement to the manufacturer of the fuel cell modules that are covered by this Agreement, upon receipt of a Consent to Assignment, in the form attached hereto as F, executed by Contractor and the manufacturer of the fuel cell module, and, if the City has elected to require a performance bond for this Agreement, the written consent of the surety to the substitution of principal on the performance bond, or a new performance bond naming the manufacturer of the fuel cell modules as principal. Any attempt by Contractor to assign this Agreement, except as allowed by this Section, will be voidable at City's sole option."

b. Section 22 Subcontractors

Replace the entire section 22 Subcontractors, including subsection 22.1 and 22.2 with:

22 Subcontractors

Contractor may only use subcontractors to perform services authorized under this Agreement with the written consent of the City.

22.1 Authorized Subcontractors

Contractor must obtain City's prior written consent in order to use, change or add any subcontractor. Contractor shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. CITY assumes no responsibility whatsoever concerning compensation to subcontractors.

22.2 COMPLIANCE WITH AGREEMENT

Contractor shall ensure that all Contractor subcontractors comply with this Agreement. At City's request Contractor shall require any or all of Contractor's subcontractors to sign an agreement requiring compliance with this Agreement.

3. The Fuel Cell Service Agreement is revised to incorporate a new Exhibit F, which is attached hereto and incorporate by reference herein.

4. Section A1000 of the Technical Design Build Specifications is revised to read as follows:

- a. Part 2 Design Criteria, Subpart 2.01 General Design Criteria, Item A

Replace:

"The Fuel Cell shall be of the Molten Carbonate Type."

With:

"The Fuel Cell shall be of Molten Carbonate Type, unless the City has provided notice prior to bid opening through the issuance of an Addendum that an alternative Fuel cell Technology may be used."

- b. Part 2 Design Criteria, Subpart 2.01 General Design Criteria, Item D

Add:

"The fuel clean-up system shall be Applied Filter Technology or equal"

- c. Part 2 Design Criteria, Subpart 2.01 General Design Criteria

Add item I

"I. Not including the fuel clean-up system, the footprint area of the FCS shall not exceed 50 feet by 70 feet."

5. The Special Provisions are revised to include the following:

Section 6-1.05 of the Standard Specification (page 6-3 of Standard Specifications) shall be revised to substitute the following for the last sentence in the third paragraph of said section:

"Such request shall be made within 5 working days after award of contract."

6. Bid to City Of San José - Replace the entire section with **Bid to City of San Jose** issued herewith.

7. Notice to Contractors - Page 2, under Filing of Bids, change "on or before 3:00 pm Thursday, June 14, 2007", as per Addendum 4, with "on or before 3:00 pm Thursday, June 28, 2007".

Clarifications

1. Question and Answer, item #7 in Addendum #2

If the City consents to assignment of the Fuel Cell Service Agreement, the assignee shall be bound by, and to perform the obligations of the Contractor under the service agreement. Contractor shall be relieved of any responsibility from the service contract once the

assignment of the service agreement is executed. This is different from subcontracting in which the Contractor will retain full responsibility of the service contract.

2. Utility Interconnection for the fuel cell system

Any fuel conditioning system required to meet the guaranteed performance of the Fuel Cell System (FCS) is considered part of the FCS and any utility interconnections within the FCS shall be part of the contract and responsibility of the Contractor.

City will route and terminate all utilities required for the FCS at the interface connection points identified in the Fuel Cell skid. It will be the Contractor's responsibility to provide any extensions from these points to other service or utility points within the FCS.

Exhibit F

RD:MD1
6/8/2007

**CONSENT TO ASSIGNMENT BY AND AMONG THE CITY OF SAN JOSE,
_____[FUEL CELL DESIGN BUILD
CONTRACTOR] AND _____[FUEL CELL
MANUFACTURER]**

This Consent to Assignment ("Assignment"), is dated _____ ("Effective Date") among the City of San José, a California charter city, ("City"), _____ ("FCS DB Contractor") and _____, a [type of legal entity] registered and doing business in California ("FCS Manufacturer").

RECITALS

WHEREAS, on _____, Fuel Cell System Design Build Contractor and City entered into an agreement for operation and maintenance of a Fuel Cell System to be designed and built by Fuel Cell System Design Build Contractor ("Fuel Cell O & M Agreement"); and

WHEREAS, FCS DB CONTRACTOR and FCS MANUFACTURER have requested the approval of City to the assignment to FCS MANUFACTURER of all right, title, interests and obligations of FCS DB CONTRACTOR in the FCS O&M Agreement ; and

NOW, THEREFORE, the Parties agree as follows:

1. Consent to Assignment. City hereby consents to the assignment to FCS MANUFACTURER of all right, title, interests and obligations of FCS DB CONTRACTOR in the FCS O&M Agreement.
2. FCS DB CONTRACTOR and City Mutual Waiver of Interests. FCS DB CONTRACTOR and City hereby mutually waive any claims or rights that they may now have or may have in the future arising out of the FCS O&M Agreement.
3. FCS MANUFACTURER Assumption of Obligations & Liabilities. FCS MANUFACTURER hereby agrees to be bound by, and to perform the obligations of FCS DB CONTRACTOR under the FCS O&M Agreement, in accordance with all conditions contained in the FCS O&M Agreement.
4. No Waiver of Rights by City. Except as expressly stated herein, nothing contained herein shall be construed to constitute a waiver or release by the City of any right, term of condition of the FCS O&M Agreement.
5. No Obligation of City for Costs of Assignment. The Parties agree that City is not obligated to pay or reimburse FCS DB CONTRACTOR or FCS MANUFACTURER for, or otherwise give effect to, any costs, taxes, or other expenses,

RD:MD1
6/8/2007

or related increases in such, directly or indirectly arising out of or resulting from the assignment of the FCS O&M Agreement.

6. Amendment of Section 26 of FCS O&M Agreement. Section 25 of the FCS O&M Agreement is amended to substitute the following for notice to Consultant:

To CONTRACTOR:

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By _____

FCS DB CONTRACTOR

By _____

Name:

Title:

By _____

Name:

Title:

FCS MANUFACTURER

By _____

Name:

Title:

By _____

Name:

Title:

Bid to City Of San José

for

Fuel Cell System

Name of Bidder: _____

The representations herein are made under penalty of perjury.

To: The City of San Jose, State of California

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the bidder has thoroughly read and examined and has full knowledge of and understands all the provisions and contents of this proposal and the documents which must be attached hereto, the Plans approved by the Director of Environmental Services Department on **April 17 2007**, entitled **Fuel Cell System**, and the Specifications approved by the Director of Environmental Services Department on **April 17 2007**, entitled **Fuel Cell System** on file in the office of the Director of Environmental Services Department of the City of San Jose in City Hall, San Jose, California; that the bidder has thoroughly examined said Plans and Specifications which are on file in the office of the Director of Environmental Services Department, and that the bidder has full knowledge of and understands said Plans and Specifications and the requirements thereof; and that the bidder has further read and understands, and has knowledge of the contents of any and all addenda to said Plans and Specifications on file; and that the bidder proposes and agrees, if this proposal is accepted, that the bidder will contract with the City of San Jose, in the form of the copy of the contract on file in the office of the Director of Environmental Services Department, to do all the work and furnish all materials specified or referred to in the contract, in the manner and time therein prescribed, and according to the requirements of the City or Director of Environmental Services Department as therein set forth, to furnish the contract, bonds and insurance specified in the Specifications, and to do all other things required of the Design-Build Contractor by the contract; and will take in full payment therefore the following price or unit prices as shown in the Schedule of Quantities on the next page(s).

If the bidder or other interested persons is a corporation, state legal name of corporation, also names of the President, Secretary, Treasurer, and the Manager thereof; if a partnership, state the name of the partnership, if one exists, also the names of all the partners comprising the partnership; if any of the partners are individuals, state the first and last name of every individual in full, if any of the partners are corporations, state for each such corporation, the information required above of corporations; if any of the partners are partnerships, state for each such partnership the information required above of partners; if the bidder or other interested person is a joint-venture, state the name of the joint venture, also names of all joint venturers comprising the joint venture; if any of the joint venturers are individuals, state the first and last name of every individual comprising the joint venture; if any of the joint venturers are corporations, state for each corporation the information required above of corporations; if any of the joint venturers are partnerships, state for each such partnership, the information required above of partners; if bidder or other interested persons is an individual, state first and

last names in full.

If bidder is an individual, the bidder's signature shall be placed below; if bidder is an individual, doing business under a fictitious name, the name of the individual followed by the words "doing business under (insert the fictitious name)" shall be set forth above, together with the signature of the individual; if bidder is a corporation, the legal name of the corporation shall be set forth above, together with the signature of the officer or officers of the corporation, authorized to sign contracts on behalf of the corporation, the corporate title; that is Vice-President, Secretary, etc., should be placed below the name of the officer and the corporate seal affixed; if bidder is a partnership, the legal name of the partnership, if one exists, shall be set forth above, together with the signature of the partner or partners authorize to sign contracts on behalf of the partnership; if any of the partners are corporations, execution for such partners shall be accomplished in accordance with the requirements set forth above for corporations; if any of the partners are partnerships, execution for such partners shall be accomplished in accordance with the requirements set forth above for partnership; if bidder is a joint-venture, the legal name of the joint venture, if one exists, shall be set forth above for partnerships. If signature is by an agent other than an officer of a corporation, or member of a partnership or a joint venture, a Power of Attorney must be on file with the City Clerk prior to opening bids or submitted with the bid; otherwise, the bid may, at the City's option, be disregarded as non-responsive.

If this proposal shall be accepted and the undersigned shall fail to contract, and to give the Contractor's Bonds For Faithful Performance and the Contractor's Payment Bond required by the specifications and contract and by law, and to provide all insurance as required by said contract, within eight (8) days after the bidder has received notice from the City of San Jose, the City may, at its option, determine that the bidder has abandoned his/her contract, and thereupon this proposal and the acceptance thereof shall be null and void, and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the City of San Jose.

In accordance with Public Contract Code Section 10232, the Design-Build Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding on contempt of court by a federal court has been issued against the Design-Build Contractor within the immediately preceding two year period because of the Design-Build Contractor's failure to comply with an order of a federal court which orders the Design-Build Contractor to comply with an order of the National Labor Relations Board. Signing this Proposal on the signature portion thereof shall constitute signature of this Statement.

Accompanying this proposal are the following documents completely filled in by the bidder and the same are incorporated herein by reference;

1. Cash, a cashier's check or a certified check made payable to City, or a bidder's bond executed by an admitted surety insurer naming the City as beneficiary, in an amount equal to \$30,000.
2. A list of design subconsultants for work over one half of one percent of the design contract, if any, the address of each subconsultant and the description of work to be done by each subconsultant

3. A list of subcontractors for work over one half of one percent of the construction contract, if any, the address of each subcontractor and the description of work to be done by each subcontractor.
4. A statement of financial responsibility, technical ability, and experience if such information is not already on file with the City.
5. Safety Record
 - A. Copy of completed OSHA Form 300A, "Summary of Work-Related Injuries and Illnesses" for most recent calendar year.
 - B. Copy of communication from contractor's workers' compensation insurance carrier indicating the contractor's "Experience Modifier" (or "ex. Mod")

City may at its option, request additional supplemental information after bid opening.

Bidder understands that the City reserves the right to reject any or all bids and to waive any informalities in the bidding.

The undersigned, as bidder, declares that in listing subcontractors in this bid, I have not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. I understand that any such discrimination or preference is in violation of Chapter 4.08 of the Municipal Code.

Execution of the Non-Collusion Affidavit constitutes execution of this Bid Proposal including the above statement of nondiscrimination and, with the exception of the Bidder's Bond or Addenda, if any, no other signatures will be required.

Schedule of Quantities

for
San Jose/Santa Clara Water Pollution Control Plant

Fuel Cell System

Base Bid Items for Fuel Cell System					
Item	Base Bid Item Description	Unit	Estimated Quantity	Unit Price	Extended Price (In Figures)
1	Design of Fuel Cell System (Section A-1000)	Lump Sum	1		
2	Construction of Fuel Cell System (Section A-1000) (Sum of Items 2A and 2B)	Lump Sum	1		
2A	Price of Fuel Cell System (Section A-1000)	Lump Sum	1		
2B	Price for Installation and Commissioning of Fuel Cell System (Section A-1000)	Lump Sum	1		
3	Service and Maintenance of the Fuel Cell System (Replacement/Restacking not included)	kW-Hours	52,560,000		
4	Replacement/Restacking of Fuel Cell System	Lump Sum	1		

Total Base Bid Amount in Figures (Items 1, 2, 3, and 4) _____

Total Base Bid Amount in Words (Items 1, 2, 3, and 4) _____

Deductive Bid Items					
<p align="center">Number of Modules-_____ at _____ kW per Module</p> <p>(The total kW to be deducted (Number of Modules x kW per Module) shall neither be less than 200 kW nor more than 300kW)</p>					
Item	Deductive Bid Item Description	Unit	Estimated Quantity	Unit Price	Extended Price (In Figures)
A	Price of Number of Modules stated above, including installation and commissioning	Lump Sum	1		
B	Service and Maintenance of Number of Modules stated above (Replacement/Restacking not included)	kW-Hours	Note 1		
C	Replacement/Restacking of Number of Modules stated above	Lump Sum	1		

Deductive Bid Item for Performance Bond for Fuel Cell System Service Agreement (Items 3 and 4)					
Item	Deductive Bid Item Description	Unit	Estimated Quantity	Unit Price	Extended Price (In Figures)
D	Contractor's Bond For Faithful Performance for Fuel Cell System Service Agreement (Items 3 and 4)	Lump Sum	1		

Note 1: The estimated quantity shall be calculated as follows
Estimated Quantity (kW-Hours) = (Number of Modules) x (kW per Module) x 24 hours/day x 365 days/year x 5 years

Basis of Bid Evaluation: Bidder shall submit a Total Base Bid on a lump sum basis as set forth in the Schedule of Quantities. The bid shall include all State, Federal, and other taxes applicable to the project and shall be firm offer for a period of 90 days after bid opening. All bid items, including lump sums and unit prices, must be filled in completely for Base Bid Items and Deductive Bid Items. In the evaluation of Bids, the lowest bid shall be the lowest responsive Base Bid (Items 1, 2, 3, and 4). Once the low bidder has been identified, the City may elect to award Items 1, 2, and 3 or deduct Items A, B, and/or D from the Bid, even if the resulting contract amount is not the lowest price.

As stated in the Service Agreement, the City shall have the option to order the replacement/restacking of the Fuel Cell System (Item 4) during the term of the Service Agreement. If the City elects to deduct Items A and B, then the price of Item 4 shall be reduced by the price of Item C.

Bidder:

Company

Signature

Noncollusion Affidavit

Project Title: **Fuel Cell System**

_____, being first duly sworn,
(print name)

deposes and says that he/she is the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

In accordance with Title 23, United States Code, Section 112, the bidder hereby states, under penalty of perjury, that he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract. Bidders are cautioned that making a false certification may subject certifier to criminal prosecution.

The undersigned declares under penalty of perjury that the information contained in this proposal and all accompanying documents are true and correct.

Executed on _____

Legal Company Name

Indicate Type of Entity: Sole Proprietorship, Partnership (General/Limited Partners), Corporation, Joint Venture, etc.

By: _____ Title: _____

City Business Lic. No.: _____

Expiration Date: _____

State Contractor Lic. No.: _____

Classification: _____

Expiration Date: _____

Federal ID No.: _____

Address: _____

Telephone: _____

Notary

On _____ before me, _____, personally
(Name and title of officer)

Appeared _____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

WITNESS my hand and official seal, subscribed and sworn to before me.

Signature _____
Notary Public

(Seal)